Sales—Implied Warranty—Fitness For Resale Under Law of Foreign Country.—The plaintiff, an Argentine firm, purchased a quantity of medicinal waters from the defendant, an English manufacturer, who had been supplying the plaintiffs with these waters for a number of years. The Argentine authorities analyzed some of the waters of the last purchase, and ordered them to be destroyed because they were found to contain salicylic acid and were not legally salable in Argentina. The plaintiff instituted suit for damages for breach of warranty alleged to be implied by section 14 of the English Sale of Goods Act. (1893) 56 & 57 Vict. c 71, sec. 14. *Held,* that there was no implied warranty that the waters were suitable for sale in Argentina, and that the words "merchantable quality" in the English statute had no reference to the state of law of the country to which the goods were to be sent. *Sumner, Permain & Co. Ltd. v. J. G. Webb & Co. Ltd.* (1921, C. A.) 38 T. L. R. 45.

Caveat emptor governed the sale of goods at early common law, and in the absence of an express warranty, the vendor was not liable for any defects in the article sold unless he was aware of them. Rolle, *Abridgement,* p. 90, pl. 1, 2, 3, 4. However, it is now well established that under certain circumstances a seller impliedly warrants the merchantability of the articles sold, and if their intended use is communicated to him there is an implied warranty that the goods are reasonably suited for that use. *Jones v. Just* (1868) L. R. 3 Q. B. 197; *Brown v. Edgington* (1841, C. P.) 2 Man. & G. 279; *Murchie v. Cornell* (1891) 155 Mass. 60, 29 N. E. 207. It must appear that the buyer relied on the judgment and skill of the seller in the selection of the article before any warranty of fitness can be implied. *Kellogg Bridge Co. v. Hamilton* (1884) 110 U. S. 108, 3 Sup. Ct. 537. This rule has been incorporated in both the English Sale of Goods Act, section 14, and in the American Uniform Sales Act, section 15. Apparently the burden is on the buyer, who alleges the warranty, to prove that he relied on the seller's superior knowledge. It is possible in certain cases that describing the goods as being of merchantable quality is equivalent to saying that they are fit for the use intended. See Williston, *Sales* (1909) sec. 235. This would be the situation in the instant case if the contentions of the plaintiff were upheld; if the tonic waters were not fit for resale in Argentina they were not of "merchantable quality." It seems that this term has been used solely to describe the physical state of the goods sold, i. e. that they are sound commodities, and are not damaged or in a state of decay such as would prevent them from being readily salable. See Benjamin, *Sales* (1920) 6th ed. 730; 2 Mechem, *Sales* (1901) sec. 1340. It is conceivable, however, that an English manufacturer could be held to have impliedly warranted his products to be legally salable under the law of England, but this warranty could hardly be implied with reference to the law of a foreign country of which the manufacturer has no knowledge. Cf. *National Metal Edge Box Co. v. Gotham* (1908) 125 App. Div. 101, 109 N. Y. Supp. 450. In the absence of any proof that the plaintiff relied on the superior knowledge and judgment of the defendant the court seems fully justified in having decided in the latter's favor.

Taxation—Intangible Personal Property of Resident Situated in Another State and Bequeathed to Non-Resident.—A resident of Colorado died in New York, leaving personal property consisting of stocks, bonds, and credits, all of which were in New York. The legatees were residents of New York and the will was probated in that state. The State of Colorado brought suit in a New York court against the executrix and legatees to recover an inheritance tax. *Held,* that the action could not be maintained. *State of Colorado v. Harbeck* (1921, N. Y.) 133 N. E. 357.

Intangible personal property, although outside the state where the decedent

was a resident, may be subjected to an inheritance tax under the application of the maxim "*mobilia sequuntur personam.*" *Bullen v. Wisconsin* (1915) 240 U. S. 625, 36 Sup. Ct. 473; *Frothingham v. Shaw* (1899) 175 Mass. 59, 55 N. E. 623. Cf. *Anderson v. Durr* (1921, U. S.) 42 Sup. Ct. 15; COMMENTS (1922) 31 YALE LAW JOURNAL, 429. And vice versa, where the property has a situs within the state, an inheritance tax may be imposed irrespective of where the decedent or the beneficiary may reside. *Blackstone v. Miller* (1903) 188 U. S. 189, 23 Sup. Ct. 277; *Carr v. Edwards* (1913) 84 N. J. L. 667, 87 Atl. 132. On this latter principle, shares of stock in a domestic corporation may be subjected to a transfer tax although the decedent and beneficiary are non-residents, and the certificates of stock are outside the state. *Greves v. Shaw* (1899) 173 Mass. 205, 53 N. E. 372; *People v. Griffith* (1910) 245 Ill. 532, 92 N. E. 313. It has been held in Illinois, however, that shares of stock in a foreign corporation are not subject to such a tax although the corporation owned property within the state, the conditions being otherwise similar. *Oakman v. Small* (1918) 282 Ill. 360, 118 N. E. 775. The real reason for this doctrine is probably the practical objection to enforcing such a tax by taking the corporate property. See Gleason & Otis, *Inheritance Taxation* (2d. ed. 1919) 321. The reason given by the court, however, was the familiar principle that the taxing power of a state is limited to persons or property within its jurisdiction, which seems inapplicable to the facts of the case since there was property of the corporation in the state, of which the share-holders are of course the owners. But in the instant case an even greater practical difficulty existed, in that there was actually no property in Colorado and hence no way to collect the tax by a proceeding in that state, the beneficiaries being also beyond the jurisdiction. *Pennoyer v. Neff* (1877) 95 U. S. 714. The New York Court, furthermore, was clearly right in dismissing the suit brought by the State of Colorado against the executrix and beneficiaries in New York, since the penal and revenue laws of one state have no force in another. *Wisconsin v. Pelican Insurance Company* (1888) 127 U. S. 265, 8 Sup. Ct. 1370. The present case does not decide whether the tax failed because there was no taxing power or because there was no means of collecting it. It has been held that a state has no constitutional power to impose a transfer tax merely because the beneficiary lives within the state, if the decedent is a non-resident and the property is also outside the state. *State v. Brim* (1858) 57 N. C. 300. This is clearly sound if the tax is upon the privilege of transmitting rather than upon the privilege of receiving. See (1920) 30 YALE LAW JOURNAL, 199; but cf. *Carter's Estate* (1918) 167 Wis. 89, 166 N. W. 657 (evenly divided court); see also *People v. Griffith, supra.* So far as the *power* to tax is involved it appears therefore that the residence of the decedent and not that of the beneficiary is important. (But cf. *Oakman v. Small, supra,* in which the court said that either the beneficiary or the property must be within the jurisdiction.) Hence if the beneficiaries, though resident in New York, could be served with process in Colorado the present tax might be collected. In other words the tax failed for lack of "jurisdiction *in personam*" rather than for lack of "jurisdiction of the subject matter." *People v. Union Trust Co.* (1912) 255 Ill. 168, 99 N. E. 377; *Re Hodges* (1915) 170 Calif. 492, 150 Pac. 344; *Re Dingman* (1901) 66 App. Div. 228, 72 N. Y. Supp. 694. The State of Colorado thus imposed a legitimate tax, for the collection of which, however, under the peculiar circumstances, no adequate machinery can be devised.

TORTS—CONVERSION—DEFENDANT LIABLE FOR A MISDELIVERY RESULTING IN LOSS.—The defendants agreed to buy a certain bond from the plaintiff. By mistake the plaintiffs sent a different bond, which their messenger dropped